

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Justin Downing,	)	No. CV-22-08159-PCT-SPL
	)	
Plaintiff,	)	<b>RULE 16</b>
vs.	)	<b>CASE MANAGEMENT ORDER</b>
	)	
Lowe's Companies Incorporated,	)	
	)	
Defendants.	)	

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The parties have met and prepared a Joint Rule 26(f) Case Management Report and a Joint Proposed Rule 16 Case Management Order. On the basis of the parties' submissions, and the Court's considered assessment of the time necessary to complete discovery and the necessary submissions,

**IT IS ORDERED:**

**I. RULES**

Both counsel and *pro se* litigants must abide by the [Local Rules of Civil Procedure](#) ("LRCiv" or "Local Rules"), Rules of Practice of the U.S. District Court for the District of Arizona, and the [Federal Rules of Civil Procedure](#).

The Preliminary Order and its Attachments issued in this case are incorporated by reference and remain in effect. To any extent the Preliminary Order differs from this Order, this Order shall govern.

**II. JOINING PARTIES AND AMENDING PLEADINGS**

The deadline for joining parties, amending pleadings, and filing supplemental

pleadings is **November 24, 2023**.

Any motion for leave to amend or notice of amendment must be filed in accordance with Rule 15.1 of the Local Rules of Civil Procedure. Any motion or notice that does not comply with the local and federal rules may be stricken by the Court.

### **III. DISCOVERY**

**Discovery Deadline:** All discovery, including discovery by subpoena, shall be completed on or before **May 24, 2024**.<sup>1</sup> Discovery at this stage shall be narrowly focused on issues related to the named plaintiff and collective certification.

**Written Discovery Limitations:** Each side may propound up to 25 interrogatories, including subparts. The parties are also limited to 25 requests for production of documents, including subparts, and 25 requests for admissions, including subparts. All interrogatories, requests for production of documents, and requests for admissions shall be served at least **forty-five (45) days** before the discovery deadline.<sup>2</sup>

Responses to discovery requests must be stated with specificity; general or boilerplate objections are not permitted. If a party objects to providing relevant information, including an objection that providing the required information would involve disproportionate expense or burden, it must provide particularized information regarding the nature of the objection and its basis, and fairly describe the information being withheld. Where a party limits its response on the basis of privilege or work product, a privilege log is required unless the Court orders otherwise.

**Fact Depositions:** All depositions shall be scheduled to commence at least **five (5) working days** prior to the discovery deadline. A deposition commenced five (5) days prior

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<sup>1</sup> The discovery deadline concludes the time to propound discovery, the time to answer all propounded discovery, the time to supplement disclosures and discovery, the time for discovery by subpoena, the time for the Court to resolve all discovery disputes, and the time to complete any final discovery necessitated by the Court's ruling on any discovery disputes.

<sup>2</sup> The parties may mutually agree in writing, without Court approval, to increase the discovery limitations or extend the time provided for discovery responses in Rules 33, 34, and 36 of the Federal Rules of Civil Procedure. Such agreed-upon increases or extensions, however, shall not alter or extend the discovery deadlines set forth in this Order.

1 to the deadline may continue up until the deadline, as necessary. Depositions shall be  
 2 limited to seven hours each as provided in Rule 30(d)(1) of the Federal Rules of Civil  
 3 Procedure.

4 **Expert Disclosures:** Plaintiff shall provide full and complete expert disclosures as  
 5 required by Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure no later than  
 6 **June 7, 2024**. Defendants shall provide full and complete expert disclosures as required by  
 7 Rule 26(a)(2)(A)-(C) of the Federal Rules of Civil Procedure no later than **June 28, 2024**.  
 8 Rebuttal expert disclosures, if any, shall be made no later than **July 12, 2024**. Rebuttal  
 9 experts shall be limited to responding to opinions stated by initial experts. Absent truly  
 10 extraordinary circumstances, parties will not be permitted to supplement their expert  
 11 reports after these dates.

12 **Expert Depositions:** Expert depositions shall be completed no later than **July 26,**  
 13 **2024**. Expert depositions shall be scheduled to commence at least **five (5) working days**  
 14 before the deadline.

15 **Discovery Disputes:** Discovery disputes are *strongly discouraged*. Parties shall *not*  
 16 present any discovery dispute without first seeking to resolve the matter through personal  
 17 consultation and sincere effort as required by LRCiv 7.2(j). In the event the parties cannot  
 18 reach a resolution, they may jointly request assistance by contacting the Court to request a  
 19 hearing on the dispute; the parties shall not file written discovery motions without leave of  
 20 Court. The Court will seek to resolve the dispute during the hearing, and may enter  
 21 appropriate orders on the basis of the hearing or may order written briefing. If the Court  
 22 orders written submissions, the parties shall include a statement certifying that counsel  
 23 could not satisfactorily resolve the matter after personal consultation and sincere efforts to  
 24 do so in accordance with Local Rule 7.2(j).

25 Absent extraordinary circumstances, the Court will *not* entertain fact discovery  
 26 disputes after the deadline for completion of fact discovery, and will *not* entertain expert  
 27 discovery disputes after the deadline for completion of expert discovery.

28 **Protective Orders:** As a general practice, this Court does not approve or adopt

1 blanket, umbrella protective orders or confidentiality agreements, even when stipulated to  
 2 by the parties. Further, the fact that the parties have designated materials or information as  
 3 confidential pursuant to an agreement or stipulation does not mean that the Court will order  
 4 that the filings containing such information be placed under seal. In the event discovery  
 5 mandates disclosure of specific, harmful, confidential material, the Court will entertain a  
 6 request for a protective order at that time if it is tailored to protect the particular interests  
 7 at hand in accordance with Rule 26(c) of the Federal Rules of Civil Procedure. Any party  
 8 wishing to seal a record or document and shield it from public view must prove why the  
 9 interest in secrecy outweighs the presumption of public access to judicial records and  
 10 documents.

#### 11 **IV. MOTIONS**

12 **Conditional Certification:** Any motion for conditional collective certification  
 13 under Section 216(b) of the Fair Labor Standards Act shall be filed no later than **August**  
 14 **2, 2024**. Any response shall be filed within **14 days** of service of the motion. Any reply  
 15 shall be filed within **7 days** of service of the response.

16 **Decertification:** If conditional collective certification is granted, Defendant shall  
 17 have **ninety (90) days** to move to decertify the proceedings as a collective action following  
 18 the mailing of the opt-in notice to Defendant's employees.

19 **Dispositive Motion Deadline:** Dispositive motions shall be filed no later than  
 20 **September 20, 2024**.

21 **Pre-Motion Conferral:** Any motion made pursuant to Federal Rule of Civil  
 22 Procedure 12 is discouraged if the challenged defect in the pleading can be cured by filing  
 23 an amended pleading. In accordance with LRCiv 12.1(c), the Court therefore requires: (1)  
 24 *conferral* – the movant must confer with the opposing party prior to filing a motion to  
 25 dismiss for failure to state a claim or counterclaim pursuant to Rule 12(b)(6), or a motion  
 26 for judgment on the pleadings on a claim or counterclaim pursuant to Rule 12(c), to  
 27 determine whether such motion can be avoided; and (2) *certification* – the movant must  
 28 *attach* a certificate of conferral, certifying that it notified the opposing party of the issues

1 asserted in its motion (in person, by telephone, or in writing), and that the parties conferred  
 2 but were unable to agree that the pleading was curable in any part by a permissible  
 3 amendment offered by the pleading party. Any motion lacking an attached compliant  
 4 certificate may be summarily stricken by the Court.

5 The parties must also confer prior to filing any motion pursuant to Federal Rule of  
 6 Civil Procedure 56. In doing so, the parties shall exchange a two-page statement describing  
 7 any anticipated motion for summary judgment and response, identifying the issues and  
 8 claims on which summary judgment will be sought and the basis for the motions and  
 9 response. The purpose of conferral should be aimed at streamlining the issues in dispute,  
 10 and dispensing of statements of fact. A certificate of conferral must be *attached* to any  
 11 motion for summary judgment. Any motion lacking an attached compliant certificate may  
 12 be summarily stricken by the Court.

13 **Dispositive Motion Limitations:** Absent leave of Court, no party shall file more  
 14 than one motion for summary judgment. To obtain leave of Court, a party shall file a motion  
 15 setting forth the reasons justifying the filing of more than one summary judgment motion.

16 **Statements of Fact:** Statements of Fact (“SOF”) required by Local Rule 56.1 shall  
 17 not exceed ten (10) pages in length, exclusive of exhibits. Electronic copies of SOF shall  
 18 be emailed to the opposing party and to chambers in Microsoft Word® format at  
 19 [Logan\\_Chambers@azd.uscourts.gov](mailto:Logan_Chambers@azd.uscourts.gov). Any Controverting SOF, as set forth in Local Rule  
 20 56.1(b), shall include the entirety of the SOF in each responsive paragraph. Additional SOF  
 21 shall continue in numerical sequence.

22 **Oral Argument:** The parties shall not notice oral argument on any motion. Instead,  
 23 a party seeking oral argument shall place the words “Oral Argument Requested”  
 24 immediately below the title of the motion. *See* LRCiv 7.2(f). The Court will issue an order  
 25 scheduling oral argument as it deems appropriate.

26 **Copies:** A paper copy of any document exceeding ten (10) pages in length shall be  
 27 submitted to chambers promptly following its electronic filing. Paper copies of documents  
 28 which are too large for stapling must be submitted in a three-ring binder. Electronic copies

of proposed orders or findings shall be emailed to chambers in Microsoft Word® format at [Logan\\_Chambers@azd.uscourts.gov](mailto:Logan_Chambers@azd.uscourts.gov).

**Noncompliance:** All parties are specifically admonished that “[i]f a motion does not conform in all substantial respects with the requirements of [the Local Rules], or if the opposing party does not serve and file the required answering memoranda... such noncompliance may be deemed a consent to the denial or granting of the motion and the Court may dispose of the motion summarily.” LRCiv 7.2 (emphasis added).

#### **V. SETTLEMENT DISCUSSIONS**

All parties and their counsel shall meet in person and engage in good faith settlement talks no later than **May 24, 2024**. Upon completion of such settlement talks, and in no event later than **five (5) working days** after the deadline for settlement talks, the parties shall file with the Court a joint report on settlement talks executed by or on behalf of all counsel. The report shall inform the Court that good faith settlement talks have been held and shall report on the outcome of such talks. The parties shall indicate whether assistance from the Court is needed in seeking settlement of the case. The parties shall promptly notify the Court at any time when settlement is reached during the course of this litigation.

The parties are reminded that they may request to refer this action to a magistrate judge pursuant to LRCiv 83.10 for the purpose of holding a settlement conference (mediation), minitrial, summary jury trial, early neutral evaluation, or other form of dispute resolution. Alternative dispute resolution, however, shall not be used as a reason to delay the processing of this case.

#### **VI. ADDITIONAL DEADLINES**

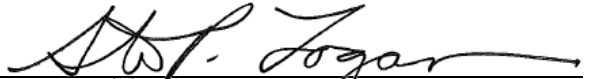
Following resolution of the issue of conditional certification, the Court will direct the parties to submit a second joint report and proposed case management order addressing the remaining case deadlines.

#### **VII. FINAL ADVISALS**

**The parties are advised that the Court intends to enforce the deadlines and guidelines set forth in this Order, and they should plan their litigation activities**

1 **accordingly.** Even if all parties stipulate to an extension, the Court will not extend the  
2 deadlines absent good cause to do so. As a general matter, the pendency of settlement  
3 discussions or the desire to schedule mediation does not constitute good cause.

4 Dated this 4th day of August, 2023.

5   
6 Honorable Steven P. Logan  
7 United States District Judge  
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